
U.S. Department of Labor

Office of Administrative Law Judges
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ISSUE DATE: January 8, 2001

CASE NO: 2000-ERA-00037

In the Matter of

TIMOTHY W. PITTMAN
Complainant

v.

VERMONT YANKEE NUCLEAR POWER CORP.
Respondent

**RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSAL OF COMPLAINT**

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), as amended 42 U.S.C. §5851 (1988 and Supp. IV 1992). A "Confidential Settlement Agreement Waiver and General Release" was executed by Complainant and Respondent on December 27, 2000 and was submitted for my review and approval on January 2, 2001. Paragraph 6 of the agreement states that Respondent will pay Complainant a specific amount. Paragraph 8 of the agreement provides protections for Respondent with respect to confidentiality. Paragraphs 1, 7 and 15 of the agreement provide for releases and dismissal of the complaint.

I must determine whether the terms of the agreement are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. §5851(b)(2)(A) (1988). Macktal v. Secretary of Labor, 923 F.2d 1150, 1153-54 (5th Cir. 1991); Thompson v. U.S. Dept. of Labor, 885 F.2d 551, 5556 (9th Cir. 1989); Fuchko and Yunker v. Georgia Power Co., Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order March 23, 1989, slip op. at 1-2.

Paragraph 15 of the agreement provides that Complainant releases Respondent from claims arising under the ERA as well as under various other laws. This review is limited to whether the terms of the settlement are a fair, adequate and reasonable settlement of

Complainant's allegations that Respondent violated the ERA. Poulos v. Ambassador Fuel Oil Co., Inc., Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2.

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Paragraph 8 of the agreement contains a confidentiality provision.

The Secretary of Labor has held with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. §552 (1988) (FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure..." Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services, 96-TSC-5, ARB Case No. 96-141, Final Order Approving Settlement and Dismissing Complaint, June 24, 1996 slip op. at 2-3. See also Plumlee v. Alyeska Pipeline Services Co., Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10. Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6; Davis v. Valley View Ferry Authority, Case No. 93-WPC-1, Sec. Final Order Approving Settlement and Dismissing Complaint, June 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to the FOIA); Ratliff v. Airco Gases, Case No. 93-STA-5, Sec. Final Order Approving Settlement and Dismissing Complaint with Prejudice, June 25, 1993, slip op. at 2 (same).

The records in the instant case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection and copying of the record is made by a member of the public, that request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed. Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in the FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. Further, it would be inappropriate to decide such questions in the proceeding. Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requester from denial of such requests, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70 (1995).

The confidentiality provision in paragraph 8 of the agreement could also constitute a "gag provision" that is unacceptable as being against public policy if it precludes Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law. However, I interpret this paragraph as not preventing Complainant, either voluntarily or pursuant to an order or subpoena, from communicating with, or providing information to, state or federal authorities about suspected violations of law involving Respondent. Therefore, paragraph 5 does not contain an invalid gag provision. Thornton v. Burlington Environmental and Phillip Environmental, 94-TSC-2,

Sec. Final Order Approving Settlement and Dismissing Complaint, Mar. 17, 1995. Moreover, in the event that this interpretation is incorrect, any aspect of paragraph 8 that would prohibit Complainant from communicating with governmental agencies is herewith severed from the agreement, pursuant to paragraph 20 which provides for "severability" of invalid provisions.

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Cf. Wampler v. Pullman-Higgins Company, 84-ERA-13, Sec. Final Order Disapproving Settlement and Remanding Case, Feb. 14, 1994 (the Secretary rejected severance of the gag provision from the remainder of the settlement despite the respondent's acquiescence, as the Complainant had requested that the provision be "stricken").

The Secretary requires that all parties requesting settlement approval of cases arising under environmental protection statutes provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or to certify that no other such settlement agreements were entered into between the parties. Biddy v. Alyeska Pipeline Service Company, 95-TSC-7, ARB Case Nos. 96-109, 97-015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. Paragraph 18 of the agreement states that the agreement contains the entire agreement between the parties concerning this matter. Accordingly, the parties have certified that the agreement constitutes the entire and only settlement with respect to Complainant's claims.

RECOMMENDED ORDER

I find that the agreement, as construed above, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, the agreement is hereby **APPROVED**, and the complaint **DISMISSED** with prejudice.

RALPH A. ROMANO
Administrative Law Judge

NOTICE: This Recommended Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).